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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/987,196	11/13/2001	Carol L. Erdman	53394.000516	6155

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GOSZ AND PARTNERS, LLP  
450 BEDFORD STREET  
LEXINGTON, MA 02420

EXAMINER
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STEPHENS, JACQUELINE F

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 04/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/987,196

Applicant(s)

ERDMAN, CAROL L.

Examiner

Jacqueline F. Stephens

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06 January 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-22, 25-44 and 47-50 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-22, 25-44 and 47-50 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Response to Arguments*

1. Applicant's arguments filed 1/6/06 have been fully considered, and are not persuasive. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., a hydrophilic lotion) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

With respect to the Roe reference, applicant argues Roe does not disclose an absorbent article wherein only a portion of a surface of the topsheet is hydrophilic and at least a portion of said surface of the topsheet is hydrophobic, and does not distinguish between various zones or portions of the topsheet. Roe teaches the topsheet 24 may include an apertured web or film, which is hydrophobic, and which can be made hydrophobic by applying a hydrophobic treatment to the topsheet, such as a hydrophobic lotion composition (col. 6, lines 22-28). Roe further teaches a FMA may be held in a skin care composition, the skin care composition being localized on the wearer-contacting surface of the article (col. 14, lines 2-6 and 48-51; col. 15, lines 50-67). Thus, Roe teaches local application of a hydrophobic lotion and a localized

hydrophobic zone. In col. 6, lines 32-47, Roe additionally incorporates by reference Roe USPN 5607760 and 5609587; and Roe et al. USPN 5635191 and 5643588, all of which teach treating at least a portion of a surface of a topsheet with a lotion composition alone or in combination with a hydrophobizing agent. Therefore, Roe teaches a selectively permeable topsheet.

2. As to the rejection of claims 13, 18, 28, and 50 as being unpatentable over Roe USPN 5998695 in view of Guidotti, applicant's arguments are again directed to the deficiencies of Roe, which are discussed above.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-12 and 14-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Roe USPN 5998695.

As to claims 1-3, 9-12, and 14-17, Roe discloses an absorbent article comprising **20**: a front and rear waist portion cooperating to form a waist opening (Figure 2); a crotch region formed between the front waist and rear waist portions (Figure 2); a selectively-permeable topsheet **24**. The topsheet is selectively permeable as Roe discloses the

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topsheet 24 may include an apertured web or film, which is hydrophobic, and which can be made hydrophobic by applying a hydrophobic treatment to the topsheet, such as a hydrophobic lotion composition (col. 6, lines 22-28). Roe further teaches a FMA may be held in a skin care composition, the skin care composition being localized on the wearer-contacting surface of the article (col. 14, lines 2-6 and 48-51; col. 15, lines 50-67). Thus, Roe teaches local application of a hydrophobic lotion (which the examiner interprets as the skin care composition). In col. 6, lines 32-47, Roe additionally incorporates by reference Roe USPN 5607760 and 5609587; and Roe et al. USPN 5635191 and 5643588, all of which teach treating at least a portion of a surface of a topsheet with a lotion composition alone or in combination with a hydrophobizing agent. Therefore, Roe teaches a selectively permeable topsheet where the portion having a lotion composition is hydrophobic. While the film or web, itself of Roe may be hydrophobic, the film or web is not water impermeable and the apertures in the film or web allow the passage of moisture (col. 6, lines 28-31). Therefore, at least a portion of the film or web is also hydrophilic in the apertured zones.

The article further includes a substantially impermeable backsheet **26**, and an absorbent core **28** disposed between the selectively permeable topsheet and substantially impermeable backsheet. Given the broadest reasonable interpretation, any part of the topsheet is a predetermined insult point and thus the hydrophilic treated topsheet can constitute a portion of the surface of the topsheet, and can be construed as a hydrophilic zone, in the hydrophobic or lotion treated areas, the areas are considered hydrophilic in that the areas contain apertures, which allow water to pass

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through. The treated hydrophilic zone of Roe comprises a surfactant (col. 6, lines 1-14) and a skin-wellness substance (col. 6, lines 32-53). The forward most point of the treated hydrophilic zone is defined as 0-20mm from the front edge of the absorbent core and the rear most point of the hydrophilic zone is 0-20 mm from the back edge of the absorbent core. Therefore, if the zero limitations are considered, the entire topsheet of Roe is a hydrophilic zone.

Roe discloses the treated hydrophilic zone is defined by an area that corresponds to a predetermined insult point that includes the central region and a male and female insult point in that the entire upper surface of the topsheet comprises the predetermined insult point.

As to claim 4, the skin-wellness substance is a substance effective or perceived as being effective in providing skin protection, skin care, skin improvement, or any combination thereof (col. 6, lines 32-53).

As to claims 5 and 8, Roe discloses the skin-wellness substance is selected from the claimed group of materials (col. 14, lines 15-47).

As to claims 6 and 7, Roe incorporates by reference suitable skin-wellness substances include Aloe and Vitamin E (col. 14, lines 43-47 refers to Roe USPN 5609587, which lists Aloe and Vitamin E as components of a skin-wellness substance col. 23, lines 28-44).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 13, 18, 19-22, 25-28, 29-44, and 47-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roe in view of Guidotti et al. USPN 5741241:

Claims 13, and 18 recite length and width dimensions for the treated hydrophilic zone. It is obvious Roe has transverse and longitudinal dimensions of the topsheet (Figure 2) however Roe does not specifically disclose the dimensions. Although it is old and well known in the art to provide an insult area of a topsheet with an oval configuration, the examiner is relying on Guidotti to show a portion of an absorbent article being designated as a wetting area (Guidotti Figure 1, element 16 and col. 4, lines 16-26). Guidotti further discloses a hydrophilic layer 16 that functions as a receiving area and allows liquid to quickly flow penetrate and covers only the wetting area (col. 4, lines 4-7, and lines 23-31). Based on the teachings of Roe and Guidotti, it would have

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been within the level of one of ordinary skill in the art to provide a hydrophilic oval area that corresponds to a wetting region to receive discharged body liquids that first contact the diaper surface for the quick penetration and dispersal of those body liquids.

Regarding the dimensions of the wetting region, it would have been an obvious matter of design choice to provide the topsheet and insult zones of Roe/Guidotti with the claimed dimensions, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

As to claims 19, 21, 22, 25-29, 31-35, 41-44, and 47-50, As to claims 1-3, 9-12, and 14-17, Roe discloses an absorbent article comprising **20**: a front and rear waist portion cooperating to form a waist opening (Figure 2); a crotch region formed between the front waist and rear waist portions (Figure 2); a selectively-permeable topsheet **24**. The topsheet is selectively permeable as Roe discloses the topsheet 24 may include an apertured web or film, which is hydrophobic, and which can be made hydrophobic by applying a hydrophobic treatment to the topsheet, such as a hydrophobic lotion composition (col. 6, lines 22-28). Roe further teaches a FMA may be held in a skin care composition, the skin care composition being localized on the wearer-contacting surface of the article (col. 14, lines 2-6 and 48-51; col. 15, lines 50-67). Thus, Roe teaches local application of a hydrophobic lotion (which the examiner interprets as the skin care composition). In col. 6, lines 32-47, Roe additionally incorporates by reference Roe USPN 5607760 and 5609587; and Roe et al. USPN 5635191 and 5643588, all of which



teach treating at least a portion of a surface of a topsheet with a lotion composition alone or in combination with a hydrophobizing agent. Therefore, Roe teaches a selectively permeable topsheet where the portion having a lotion composition is hydrophobic. While the film or web, itself of Roe may be hydrophobic, the film or web is not water impermeable and the apertures in the film or web allow the passage of moisture (col. 6, lines 28-31). Therefore, at least a portion of the film or web is also hydrophilic in the apertured zones.

The article further includes a substantially impermeable backsheet **26**, and an absorbent core **28** disposed between the selectively permeable topsheet and substantially impermeable backsheet. Given the broadest reasonable interpretation, any part of the topsheet is a predetermined insult point and thus the hydrophilic treated topsheet can constitute a portion of the surface of the topsheet, and can be construed as a hydrophilic zone, in the hydrophobic or lotion treated areas, the areas are considered hydrophilic in that the areas contain apertures, which allow water to pass through. The treated hydrophilic zone of Roe comprises a surfactant (col. 6, lines 1-14) and a skin-wellness substance (col. 6, lines 32-53). The forward most point of the treated hydrophilic zone is defined as 0-20mm from the front edge of the absorbent core and the rear most point of the hydrophilic zone is 0-20 mm from the back edge of the absorbent core. Therefore, if the zero limitations are considered, the entire topsheet of Roe is a hydrophilic zone.

Roe discloses the treated hydrophilic zone is defined by an area that corresponds to a predetermined insult point that includes the central region and a male and female insult point in that the entire upper surface of the topsheet comprises the predetermined insult point.

It is obvious Roe has transverse and longitudinal dimensions of the topsheet (Figure 2) however Roe does not specifically disclose the dimensions. Although it is old and well known in the art to provide an insult area of a topsheet with an oval configuration, the examiner is relying on Guidotti to show a portion of an absorbent article being designated as a wetting area (Guidotti Figure 1, element 16 and col. 4, lines 16-26). Guidotti further discloses a hydrophilic layer 16 that functions as a receiving area and allows liquid to quickly flow penetrate and covers only the wetting area (col. 4, lines 4-7, and lines 23-31). Based on the teachings of Roe and Guidotti, it would have been within the level of one of ordinary skill in the art to provide a hydrophilic oval area that corresponds to a wetting region to receive discharged body liquids that first contact the diaper surface for the quick penetration and dispersal of those body liquids.

Regarding the dimensions of the wetting region, it would have been an obvious matter of design choice to provide the topsheet and insult zones of Roe/Guidotti with the claimed dimensions, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

As to claims 20, Roe discloses the skin-wellness substance is selected from the claimed group of materials (col. 14, lines 15-47).

As to claim 30, the garment of Roe further comprises first and second leg gathers Figure 2.

As to claims 36, the skin-wellness substance is a substance effective or perceived as being effective in providing skin protection, skin care, skin improvement, or any combination thereof (col. 6, lines 32-53).

As to claims 37 and 40, Roe discloses the skin-wellness substance is selected from the claimed group of materials (col. 14, lines 15-47).

As to claims 38, and 39, Roe incorporates by reference suitable skin-wellness substances include Aloe and Vitamin E (col. 14, lines 43-47 refers to Roe USPN 5609587, which lists Aloe and Vitamin E as components of a skin-wellness substance col. 23, lines 28-44).

### ***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the


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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacqueline F. Stephens whose telephone number is (571) 272-4937. The examiner can normally be reached on Monday-Friday 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Jacqueline F. Stephens  
Primary Examiner  
Art Unit 3761

April 1, 2006